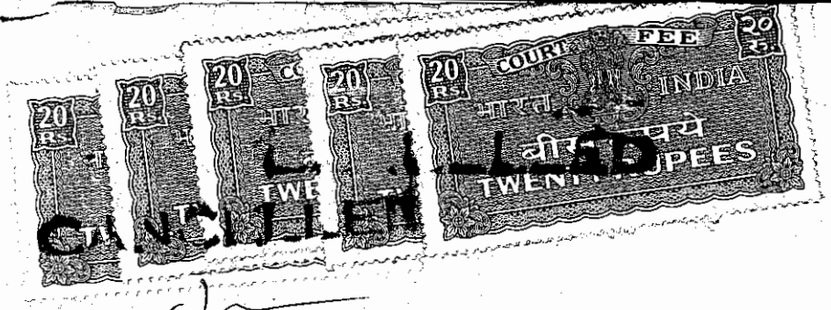

(4)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR (M.P.)

W.P. No. 2561 /2000

PETITIONER : Arif Hussain Siddiqui, aged about 25 years, s/o Shri A.H. Siddiqui, R/o Masjid para Dharam jaigarh District Raigarh (M.P.)

V E R S U S

RESPONDENTS :

R 1. State of M.P. through Secretary, Department of Panchayat and Rural Development Govt. of M.P. Vallabh Bhavan Bhopal.

R 2. Secretary, Department of Local Sel Govt. of M.P. Vallabh Bhavan Bhopal.

R 3. Director, Urban Administration Madhya Pradesh Bhopal.

R 4. Chief Municipal Officer, Nagar Panchayat Dharamjai garh District Raigarh (M.P.)

R 5. Zila Panchayat through Chief Executive Officer Raigarh (M.P.)

R 6. Collector, Raigarh (M.P.)

R 7. Commissioner, Bilaspur Division, Bilaspur (M.P.)

8. Chief Executive Officer, Zila Panchayat Raigarh (M.P.)

R 9. Satya Charan Sarkar, aged about 26 years S/Prembandhu Sarkar R/o Dharamjai-garh Colony Post Office Shahpur.

R 10. District Project Director R.G.P.S.M. Raigarh (M.P.)

R 11. Block Education Officer Dharam jaigarh Distt. Raigarh (M.P

~~12x~~

Surendra Kumar Khare
S.K. Khare
Oath Commissioner JBP.
15/9

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12. Principal, Basic Training Institute Dharamjai garh.

13. District Education Officer Dharamjaigarh (M.P.)
496116

PETITION UNDER ART.226, 227 of CONSTITUTION OF INDIA

1. Particulars of the Petitioner : As above

2. Particulars of the Respondents : As above

3. Particulars of the order against which the Petition is made :

(i) Order No. : Appeal Case No.2/89 -15/99-2000 and order No. /99-2000 Dharamjaigarh

(ii) Dated : 14.2.2000 and 13.3.2000

(iii) Passed by : Commissioner Bilaspur Division Bilaspur (M.P.) and Chief Municipal Officer Nagar Panchayat Dharamjai-garh District Raigarh (M.P.)

(iv) Subject in brief :

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.2561/2000

Arif Hussain Siddiqui

Vs.

State of M.P. & Ors.

ORDER

Per Hon. Fakhruddin, J :

By this petition under Article 226 of the Constitution of India, the petitioner challenges the order passed by the respondent No.7 - Commissioner, Bilaspur Division, Bilaspur dated 14-02-2000 (Annexure P – 6) and that of Chief Municipal Officer – respondent No.4, Nagar Panchayat, Dharamjaigarh, Dist. Raigarh (Annexure P/7).

Briefly stated the facts are that the petitioner was appointed on 18.3.1999 as per Annexure P/3 on the post of Shiksha Karmi, Grade-III, Purva Madhyamik Shala, Bazaarpara, Dharamjaigarh. He joined the said post immediately thereafter and was serving.

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It is submitted that one Satyacharan Sarkar, respondent No.9 filed an appeal under Section 91 of Panchayat Raj Adhiniyam before the Commissioner, Bilaspur against the order dt. 25.8.1999 (Annexure P/5) passed by the Chief Executive Officer, District Panchayat Raigarh-respondent No.5. By this order Annexure P/5, an order was passed whereby the appointment of respondent No.9 was cancelled on the ground that Chief Municipal Officer, Dharamjaigarh had no jurisdiction.

Respondent No.9 impleaded State of Madhya Pradesh through Collector and Nagar Panchayat, Dharamjaigarh through Chief Municipal Officer as respondents. The Commissioner noted that Satyacharan Sarkar was at Serial No.4 in the selection list and he was serving in Durgapur Colony. It was further noted that on 25.8.99 when the order was passed regarding cancellation, the person who was junior in the order, his posting ought to have been considered. It was mentioned that Satyacharan Sarkar ought to have been posted in Durgapur and the said post ought to have been transferred. The relevant portion of the order of the Commissioner is reproduced:-

(3) प्रस्तुत अपील के तथ्यो पर मुख्य नगर पालिका, नगर पंचायत, धरमजयगढ़ से उत्तर प्राप्त किया गया। अपीलार्थी के विद्वान अभिभाषक के तर्कों का श्रवण किया गया । तर्क में कहा गया कि– शिक्षा कर्मी वर्ग –3 के पद हेतु नगर पंचायत, धरमजयगढ़ द्वारा अंतिम चयन सूची तैयार की गयी थी, जिसमें अपीलार्थी का नाम वरीयता क्रम में चौथे नंबर पर था । अपीलार्थी प्रा. शाला दुर्गापुर कालोनी में नियुक्ति होकर कार्य कर रहा है । दिनांक 25–8–99 के आदेश द्वारा नियुक्ति निरस्त की गयी है । मुख्य कार्यपालन अधिकारी जिला पंचायत को यह मानना था कि शिक्षा कर्मी वर्ग–3 के पद पर वरीयता सूची में वर्णित अपीलार्थी के बाद के वरीयता क्रम वाले शिक्षा कर्मी कार्यरत है । ऐसी स्थिति में अपीलार्थी

के नियुक्ति निरस्त करने के साथ–साथ वरीयता सूची के अनुसार उसमें कम वरीयता प्राप्त शिक्षा कर्मी के नियुक्ति निरस्त करते हुए अपीलार्थी की नियुक्ति नगरपंचायत क्षेत्र में करना था । मुख्य कार्यपालन अधिकारी जिला पंचायत को यह मानना था कि प्रा. शा. दुर्गापुर कालोनी में शिक्षा कर्मी वर्ग–3 के पद रिक्त है, जिस पर अपीलार्थी कार्यरत था , तदनुसार मुख्य नगर पालिका अधिकारी धर्मजयगढ़ द्वारा दी गयी नियुक्ति को जनपद पंचायत धर्मजयगढ को स्थानांतरित करते हुए नियुक्ति की त्रुटि को सुधार करते हुए आदेश पारित करना था ।

(4) मुख्य नगर पालिका अधिकारी, नगर पंचायत, धर्मजयगढ द्वारा प्रस्तुत उत्तर का अवलोकन किया । अपीलार्थी के विद्वान अभिभाषक के तर्को का श्रवण एवं मनन किया । अपील स्वीकार की जाती है । नगरपालिका व मुख्य कार्यपालन अधिकारी को यह निर्देशित किया जाता है कि चयनित व्यक्तियों में जो सबसे कम वरीयता वाला है उसे सेवा में पृथक करें व जो भी व्यक्ति जिसे त्रुटिवश सीधे जिला पंचायत ने हटा दिया है नौकरी में रखा जाये ।

The contention of respondent No.4 is that his posting order (Annexure P/7) was passed in compliance of the order by the Commissioner, Bilaspur Division, Bilaspur and terminated the services of the petitioner.

The petitioner submitted a representation praying for quashing of Annexure P/7. Annexure P/9 is the appointment order of respondent No.9 which shows that he was appointed on 15.7.98 and was posted at Prathamika Shala, Durgapur as Shiksha Karmi.

The petitioner also filed a document as Annexure P/10 to show that Rameshwar Singh Chouhan who is at Sl.No.6, has been transferred to Abhyas Shala, Dharamjaigarh from Prathamika Shala, Dharamjaigarh and thereafter vide Annexure P/11 Shri Rameshwar Singh Chouhan's

posting was cancelled and as such, the post of Rameshwar Singh Chouhan is vacant.

The petitioner's submission is that Annexure P/12 passed by respondent No.4 intimating the Commissioner, Bilaspur that since Rameshwar Singh Chouhan's posting has been cancelled, therefore the Shiksha Karmi can be adjusted. The petitioner further submits that in any case since the post of R.S.Chouhan is lying vacant as has been recommended by the Chief Municipal Officer, Nagar Panchayat, Dharamjaigarh, the petitioner can be adjusted and the termination order of services of the petitioner, under these circumstances, is not sustainable.

The petitioner's grievance is that the appeal which was preferred under Section 91 was not maintainable under Panchayati Raj Adhiniyam though the order was passed by the Zila Panchayat. But it was in compliance of Collector's order dt. 28.7.99. The other grievance of the petitioner is that the petitioner was not joined as party nor he was heard by the Commissioner. It is submitted that ~~that~~ in any case he was not heard when the order terminating his services (Annexure P/7) was passed. It is submitted that the order was issued. He had joined and was working on the post and for any reason, if termination is required, he ought to have been heard. The said order has been passed in violation of principles of natural justice. Reliance has been placed on the decision of Supreme Court reported in 1992 (6) S.L.R. page 718, **Shrawan Kumar Jha and others Vs. State of Bihar and Shrawan**

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Kumar Jha & others Vs. Ramsevak Sharma and others, it was held that:

> "by an order the Deputy Development Commissioner cancelled the appointments of the appellants. Mr. Ashok H. Desai, learned Solicitor General appearing for the respondent has contended that the appointments have been cancelled because the District Superintendent of Education had no authority to make the appointments, it was a devise of by-passing the reservations and that the conditions which are part of the appointment order were not complied with. Mr. U.R.Lalit and Mr.A.K.Ganguli, learned Senior Advocates, appearing for the appellants have controverted these allegations and have dated that all these teachers were variedly appointed and they had joined their respective schools. It is not necessary to go into all these questions. In the facts and circumstances of this case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be without complying with the Rules of natural justice. We set aside the impugned order of cancellation dt.3.11.1988 on this short

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ground. As suggested by the learned Solicitor General, we direct that the Secretary (Education), Government of Bihar, or to other person nominated by him should give an opportunity of hearing to the appellants and thereafter give a finding as to whether the appellants were validly appointed as Assistant Teachers. He shall also determine as to whether any of the teachers joined their respective schools and for how much duration. In case some of them joined their schools and worked, they shall be entitled to their salary for such period."

Further submission of the learned counsel for the petitioner is that it was the posting of respondent No.9 that all the troubles started regarding the posting order of the respondent No.9 which was cancelled by the Collector. It is submitted that so far as respondent No.9's order is concerned, it could not have been cancelled even without hearing him and it was without jurisdiction. It is further submitted that in any case under the guise of the posting what has been done is that appointment itself was cancelled.

Counsel for the petitioner further submitted that in paragraph 5 of the return filed by respondents No.1, 2, 3, 6 & 7, it is borne out that the question was regarding the posting in Urban area and the Rural area and not that of cancellation of any post. Paragraph 5 of return of respondents No.1, 2, 3, 6 & 7 is reproduced for perusal.

"On receipt of complaint Collector, Raigarh

found that one reserved post of Sankul Shaikshik Samanyak, hereinafter referred to as C.A.C. for Dharamjaigarh urban area, under the Rajeev Gandhi Shiksha Mission. According to Rajeev Gandhi Shiksha Scheme the Shiksha Karmi should have been appointed within the urban area where school is situated. Against this post one Chanchal Vishwas, Teacher of Durgapur Colony Dharamjaigarh was posted and Respondent No.9 Shri Satyacharan Sarkar has been posted in the place of Shri Chanchal Vishwas at Durgapur Colony. According to Respondent No.9 Satyacharan Sarkar cannot be posted at Durgapur. Therefore, Collector Raigarh vide its order dated 25.8.99 cancelled the posting of Respondent No.9 (Annexure P.5). Against this order (Annexure P.5) the Respondent No.9 Satyacharan Sarkar preferred an appeal before the Commissioner Bilaspur which was registered as Appeal No.2 of 59-/1599-2000."

The return of respondent No.4 has been read and paragraph 3 shows that what is borne out is that now the position is that after issuance of cancellation order of appointment of the petitioner, the present status of the various schools and absorption of the petitioner was called and vide report dt. 4.4.2000 (Annexure P/12) the respondents have already submitted the status to the Commissioner, Bilaspur and it is intimated that one Shri Rameshwar Singh Chouhan has already been appointed as C.S.E. Dharamjaigarh, Urban area by Block Education Officer and if he is relieved, one Shiksha Karmi Grade-III can be absorbed and the Commissioner, Bilaspur was informed that since Shri

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Chouhan has been relieved, a person belonging to Class-III can be adjusted and accommodated. Annexure P/14 has been filed alongwith application which has already taken on record dt. 27.7.2000 and now the position is that the petitioner can be adjusted as the post has been fallen vacant. As such, in view of the development, which has taken place, the removal of services is not sustainable.

Counsel for the parties, therefore, submitted that the situation which was prevalent is changed subsequently and without in fact disturbing respondent No.9, the relief can be granted to petitioner.

The question remains regarding the removal. So far as the removal part is concerned, the services have been terminated arbitrarily and without hearing the petitioner. The petitioner was required to be heard since he was serving and joined and in view of the decisions passed in Shrawan Kumar Jha and others Vs. State of Bihar and Shrawan Kumar Jha & others Vs. Ramsevak Sharma and others, no order to the detriment of the petitioner could have been passed without complying with the Rules of natural justice. The present situation in the case is that so far respondent No.9 is concerned, he was also removed without hearing by Collector, Raigarh. His order of removal was set aside subsequently by the Appellate order of the Commissioner. By Annexure P/7, the service of the petitioner was terminated and they have done without hearing of the petitioner, as such, the order of terminating the services of the petitioner is set aside. Since the post is already now made available, as stated by respondent No.4 and which was further found on the basis of the return filed by respondents No.1, 2, 3, 6 & 7, the order of

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termination Annexure P/7 is not sustainable and hereby set aside. He be reinstated.

Counsel for the petitioner submits that so far as back wages of the petitioner are concerned, the petitioner may be allowed to make a representation. The petitioner may, if so advised, make a representation and the same shall be considered on its own merits in accordance with law.

In view of the aforesaid discussions, the petition succeeds and it is accordingly allowed as indicated hereinabove.

Sd/-
Fakhruddin
Judge